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BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
STATE OF MONTANA

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3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE MONTANA SCHOOL
7 SERVICES FOUNDATION

8
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,
10 ORDER, AND MEMORANDUM OPINION
11

12 These informal contested case proceedings were filed before the Commissioner
13 of Political Practices (Commissioner) to consider the appeal of the principal
14 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal
15 appealed the Commissioner's assessment of civil penalties resulting from its late
16 filing of two lobbying financial disclosure reports.

17 A hearing was held on November 7, 2007. Mary Baker, Program Supervisor for
18 the Commissioner's office, and Robert J. Robinson, Chief Executive Officer of the
19 Montana School Services Foundation, were sworn and testified. Commissioner's
20 Exhibits 1 and 2 and Principal's Exhibit A were admitted into evidence without
21 objection.

22 Based on the evidence presented at the hearing and the applicable law, the
23 Commissioner makes the following findings of fact, conclusions of law, and order.

24 **FINDINGS OF FACT**

25 1. The Montana School Services Foundation (Foundation) is a principal registered
26 with the Commissioner. The Foundation engaged in lobbying during the 2007 regular
27 session of the Montana Legislature. Robert J. Robinson is the Chief Executive Officer of
the Foundation.

2. On January 12, 2007, the Foundation filed with the Commissioner a Principal
Authorization Statement (form L-2). Robinson completed and filed the L-2. In the box

1 requiring "Principal Information," Robinson listed the name of the Foundation, with an
2 address of 725 North Montana Avenue, Helena, Montana 59601. In the same box,
3 Robinson listed Darrell Rud as the "Principal's Representative," with an email address of
4 samdr@sammt.org.

5 3. Darrell Rud is the Foundation President, but his address is not at 725 North
6 Montana Avenue, Helena, Montana 59601.

7 4. § 5-7-306, MCA, establishes civil penalties that are required to be assessed against
8 any person who fails to file lobbying financial disclosure reports within the time required
9 by law.

10 5. The January 2007 lobbying financial disclosure report for the Foundation was
11 required to be filed no later than February 15, 2007.

12 6. On January 29, 2007, the office of the Commissioner sent an email to all
13 principals, including the Foundation. The email advised that a lobbying financial
14 disclosure report was required to be filed no later than February 15, 2007. The email
15 referenced the appropriate form that was required to be filed, known as a form L-
16 5A, and noted that the form was available for download on the Commissioner's
17 website. The email was sent to Darrell Rud at "samdr@sammt.org," the email address
18 listed on the L-2.

19 7. The Foundation failed to file its L-5A on or before the due date.

20 8. On February 21, 2007, the Commissioner sent an email with an attached letter
21 to the Foundation, stating that an L-5A report was due by February 15, 2007, but
22 had not been received. The email was sent to Darrell Rud at "samdr@sammt.org,"
23 the email address listed on the L-2. The attached letter was addressed as follows:

24 Montana School Services Assn.
25 Attn: Darrell Rud
26 725 North Montana Ave.
Helena, MT 59601

27 Citing § 5-7-306, MCA, the letter stated that a civil penalty started being assessed

1 on February 16, 2007 at \$50 per day, and would continue until the report was filed
2 or until the penalty amount reached \$2,500. The letter urged the Foundation to fax
3 the delinquent report immediately, followed by a hard copy. The Foundation did not
4 file its report until June 7, 2007. Because the report was filed more than 50 days
5 late, the penalty amount was \$2,500.

6 9. The 2007 post-session lobbying financial disclosure report for the Foundation
7 was required to be filed no later than May 29, 2007.

8 10. On May 16, 2007, the office of the Commissioner sent an email to all
9 principals, including the Foundation. The email advised that a post-session lobbying
10 financial disclosure report was required to be filed no later than May 29, 2007. The
11 email referenced the appropriate form that was required to be filed, known as a form
12 L-5A, and noted that the form was available for download on the Commissioner's
13 website. The email was sent to Darrell Rud at "samdr@sammt.org," the email address
14 listed on the L-2.

15 11. The Foundation failed to file its post-session L-5A on or before the due date.

16 12. On May 30, 2007, the Commissioner sent an email with an attached letter to
17 the Foundation, stating that an L-5A report was due by May 29, 2007, but had not
18 been received. The email was sent to Darrell Rud at "samdr@sammt.org," the email
19 address listed on the L-2. The attached letter was addressed as follows:

20 Montana School Services Assn.
21 Attn: Darrell Rud
22 725 North Montana Ave.
23 Helena, MT 59601

24 Citing § 5-7-306, MCA, the letter stated that a civil penalty started being assessed
25 on May 30, 2007 at \$50 per day, and would continue until the report was filed or
26 until the penalty amount reached \$2,500. The letter urged the Foundation to fax the
27 delinquent report immediately, followed by a hard copy. The Foundation did not
file its report until June 7, 2007. Because the report was filed seven working days
late, the penalty amount was \$350.

13. The Foundation requested a hearing to contest the civil penalties. A hearing was held on November 7, 2007. At the hearing the Foundation presented the testimony of Robert J. Robinson. Robinson testified that when he completed the Principal Authorization Statement (Form L-2, see Fact 2), he listed Darrell Rud as the “Principal Representative,” listing Rud’s correct email address but listing as Rud’s address the address of the Foundation (725 North Montana Avenue, Helena, MT), which is not Darrell Rud’s correct address. Robinson also testified that because Darrell Rud does not work at 725 North Montana Avenue, the Foundation’s administrative secretary did not forward any of the mailings from the Commissioner’s office to either Robinson or Rud. Although Robinson stated in his testimony that Rud did not receive the emails from the Commissioner’s office, Mr. Rud did not testify so it is not possible to verify whether or not he received the emails.

14. Robinson also testified that he was the person responsible for reporting the Foundation’s lobbying activities and expenditures. He testified that because he did not receive the correspondence cited above, regarding the due dates for the reports and the notices of delinquent reports, he did not file the reports until June 7, 2007. Robinson urges a waiver of the penalties due to what he characterized as the unintentional late filing of the reports by the Foundation.

15. The L-2 is accompanied by a “Memorandum Re Form L-2,” which includes information to assist those who complete the L-2 form. The memorandum states:

Principal’s Representative:

A Principal’s representative (signing authority) should be the individual familiar with the terms of the lobbying agreement with the Principal’s Lobbyist and who either personally will file or supervise and approve the filing of any necessary lobbying reports on behalf of the Principal in compliance with applicable lobbying statutes and rules. The Principal’s representative also will be the individual to whom future correspondence and inquiries from the Commissioner will be addressed.

E-mail Address:

It is the policy of this agency to communicate electronically whenever

possible, thereby reducing operating costs. I am requesting that each Principal filing a form L-2 Principal Authorization Statement provide, if available, the e-mail address of the Principal's representative (signing authority). Thereafter, correspondence from this office will be via e-mail and will be directed to the Principal's representative. (Emphasis added).

16. Robinson testified he does not recall reading the Memorandum Re Form L-2 prior to filling out the L-2.

17. The Commissioner's files show that all communications and correspondence from the Commissioner's office to the Principal were correctly addressed and sent to the email address and the mailing address for the Principal's Representative designated on the L-2 form.

18. The Foundation reported lobbying payments of \$700 during the 2007 regular session of the Montana Legislature, and no further lobbying payments during either special session.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing -- suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with the Commissioner “by February 15th of any year the legislature is in session” The report “must include all payments made in that calendar year prior to February 1.”

5. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during the reporting period, the principal must file a report stating that fact. § 5-7-208(4), MCA.

6. The second sentence of § 5-7-208(1), MCA states:

A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the amount specified under 5-7-112 during a calendar year.

7. § 5-7-112, MCA established a monetary threshold of \$2,150 for calendar years 2002 through 2004. The threshold amount is adjusted according to the consumer price index in the year following a general election. The adjusted payment threshold for calendar years 2007 and 2008 is \$2,300. ARM 44.12.204.

MEMORANDUM OPINION

Information and testimony presented in this proceeding establishes that the Foundation registered to lobby and engaged in lobbying during calendar year 2007. However, the Foundation's lobbying activities did not rise to the level requiring registration or reporting.

The Foundation filed reports claiming it made payments totaling \$700 for lobbying during the regular legislative session. While § 5-7-208(4), MCA requires principals to file reports even if no payments were made during a particular reporting period, the key language in § 5-7-208, MCA is the second sentence in subsection (1): “A principal is subject to the reporting requirements of this section only if the principal makes payments exceeding the amount specified under 5-7-112

1 to one or more lobbyists during a calendar year.” As noted in Conclusion of Law 7,
2 the threshold amount for calendar year 2007 is \$2,300. Since the Foundation has
3 reported spending less than the threshold amount that triggers the reporting
4 requirements of § 5-7-208, MCA, it was not subject to the reporting provisions of
5 the statute. Sufficient factors or circumstances in mitigation exist to justify waiver
6 of the civil penalties.

7 Although I am waiving the civil penalties imposed against the Foundation based
8 on lobbying expenditures that did not meet the threshold established in the law, the
9 facts in this case illustrate that it is important for principals to carefully read and
10 follow the instructions for registration and reporting of lobbying expenses. As the
11 “Memorandum Re Form L-2” clearly states, the “Principal’s Representative” is the
12 person to whom future correspondence and inquiries from the Commissioner will be
13 addressed. In this case the Commissioner’s office directed correspondence to the
14 proper person as indicated on the L-2 – Darrell Rud, designated by the Foundation
15 as the Principal’s Representative. Moreover, the office of the Commissioner is
16 always available to answer questions should anyone need clarification regarding
17 how to properly register a principal and report lobbying expenses.

18 **ORDER**

19 THEREFORE, IT IS HEREBY ORDERED that the civil penalties assessed
20 against the Montana School Services Foundation are waived.

21 DATED this 27th day of November, 2007.

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24 Dennis Unsworth
25 Commissioner of Political Practices
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27 **NOTICE:** This is a final decision in a contested case. You have the right to seek

1 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
2 4-701 through 2-4-711.

3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
5 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

6 Robert J. Robinson
7 Montana School Services Foundation
8 725 North Montana Ave.
9 Helena MT 59601

10 DATED: November 27th, 2007

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12 Mary Baker
13 Program Supervisor
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